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OFFICE OF PETITIONS

In re Georg Muller :  
Application No.: 10/663,448 : **DECISION**  
Filed: September 16, 2003 : **GRANTING-IN-PART**  
Patent No.: 7,126,326 : **PETITION**  
Issued: October 24, 2006 :

This is a decision on the February 16, 2007 petition titled "Petition Under 37 CFR 1.181(a) And 35 U.S.C. 254 For Correction Of Mistake In A Patent, Incurred Through The Fault Of The Patent And Trademark Office," which requests correction of U.S. Patent No. 7,126,326 ("the '326 patent") ("the February 16, 2007 petition").

The February 16, 2007 petition is before the Office of Patent Legal Administration (OPLA) for consideration.

The February 16, 2007 petition is **granted-in-part**.

Application No. 10/663,448 ("the '448 application") was filed on September 16, 2003, pursuant to the provisions of 35 U.S.C. § 111 with sixteen original claims.

Prosecution advanced to the point where a paper titled "Response To Office Action" was filed on May 8, 2006, in response to the February 10, 2006 Office action. The May 8, 2006 Response includes a listing of then-pending claims 1-12; the Response does not include any further amendments to the claims.

In the July 3, 2006 Notice of Allowability issued in response to the May 8, 2006 Response, the examiner indicates that claims 1-12 are allowed. The July 3, 2006 Notice does not include an Examiner's Amendment or otherwise identify any further amendments to the claims as presented in the May 8, 2006 Response.

The '448 application issued as the '326 patent on October 24, 2006, with twelve total claims. However, only claim 1 of the '326 patent is identical to claim 1 as presented in the May 8, 2006 Response. Claims 2-12 of the '326 patent are different from claims 2-12, respectively, as presented in the May 8, 2006 Response.

The February 16, 2007 petition seeks to have the '326 patent corrected to replace issued claims 2-12 with claims 2-12, respectively, as presented in the May 8, 2006 Response.

A patent may be reprinted where there is a mistake on the part of the Office, and a certificate of correction is deemed inappropriate in form.<sup>1</sup> A certificate of correction is typically appropriate in form where the errors are less than substantially the entire document. In particular, a certificate of correction is the normal mechanism for correcting a patent where, as here, the patent was printed with the correct specification, abstract and drawings, but not with a correct set of the allowed claims of record.

Therefore, to the extent that the February 16, 2007 petition is requesting a corrected patent in accordance with 37 CFR 1.322(b), the February 16, 2007 petition is dismissed; a certificate of correction issued instead on February 17, 2009, deleting Columns 1, line 1, through Columns 12, line 36, of the '326 patent and substituting therefor Columns 1, line 1, through Columns 12, lines 26, as attached to the Certificate.<sup>2</sup>

The Office, however, can provide a courtesy corrected reprint for patent owner's records. Therefore, the February 16, 2007 petition is granted to the extent that the Office provided on February 18, 2009, a courtesy corrected reprint of the '326 patent for patent owner's records. The February 18, 2009 corrected reprint of the '326 patent is merely a courtesy provided solely for patent owner's records; the Image for the '326 patent in the USPTO Patent Full-Text and Image Database maintained by the Office contains the original printed patent with incorrect claims 2-12 followed by a specification containing the correct set of the allowed claims of record in the form of a Certificate of Correction.

Any inquiry concerning this decision should be directed to Raul Tamayo, Legal Advisor, at (571) 272-7728.



Robert A. Clarke  
Director  
Office of Patent Legal Administration  
Office of the Deputy Commissioner  
for Patent Examination Policy

<sup>1</sup> See: 35 U.S.C. § 254; 37 CFR 1.322(b).

<sup>2</sup> The Image File Wrapper record for the '448 application reveals a June 19, 2008 SPE Response For Certificate of Correction that states that "[t]he allowed claims are 1-12 dated on 5/8/2006."